

 HEINRICH BÖLL STIFTUNG
DEMOCRACY

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A pre-electoral assessment

Myanmar on the road towards the 2020 elections

Myanmar

on the road towards the 2020 elections

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Summary

The next general elections in Myanmar are scheduled for 8 November 2020. During the first half of this year, when Myanmar first started to respond to the Covid-19 pandemic, neither this date nor the dimensions of the looming health crisis were clear. Against this background, the Heinrich Böll Foundation's Yangon Office decided to conduct a remote assessment to take stock of the pre-electoral situation and shed light on some open questions and ongoing developments.

The Covid-19 pandemic exposes electoral processes worldwide to new challenges. By June 2020, over 100 electoral events had been postponed globally while some countries decided to go ahead with elections despite the pandemic. In Myanmar, the outbreak of Covid-19 compounds already existing weaknesses and risks in the electoral process, but does currently not make the holding of elections impossible or even unlikely. However, few months before election day, the further spread of the virus has to be factored in as a potential risk which could affect the process in unpredictable ways.

The Myanmar general elections, which are organized under the auspices of the Union Election Commission (UEC), take place in five-year terms. The last elections were considered a referendum against military rule which led to the current government under Daw Aung San Suu Kyi. The upcoming polls are expected to be more competitive, and the entire electoral system will likely become more tested than before.

This assessment looks briefly into the pre-electoral situation, the legal framework for elections, the election administration, voter registration, the political party landscape, campaign and campaign finance, as well as the potential cancellation of elections, and perspectives for elections in Rakhine State. Furthermore, the paper also discusses social media and election observation before focusing on election day, taking Covid-19 into account.

By doing so, this assessment builds on the language and findings of past EU and other election observation missions as well as on 25 update online interviews conducted with a variety of stakeholders. These include representatives of the UEC, political parties, the media, civil society organisations, technical assistance providers, national and international election observers, and independent experts.

Based on these conversations and additional research, the assessment also draws nine recommendations for electoral stakeholders. Whichever solutions will be found to safeguard both the right to vote and protect public health in Myanmar, they will have to be tailored to the context while upholding international standards and principles for democratic elections.

List of Abbreviations

AA	Arakan Army
ANFREL	Asian Network for Free Elections
ANP	Arakan National Party
CoC	Code of Conduct
GAD	General Administration Department
DG	Director General
DNP	Democratic Party of National Politics
EEOP	Election Education and Observation Partners
EFM	Election Follow-up Mission
EOM	Election Observation Mission
EU	European Union
MoHS	Ministry of Health and Sports
MoIP	Ministry of Immigration and Population
NLD	National League for Democracy
PACE	People's Alliance for Credible Elections
PP	People's Party
SNDP	Shan Nationalities Development Party
SNLD	Shan National League for Democracy
TCC	The Carter Center
UBP	Union Betterment Party
UEC	Union Election Commission
USDP	Union Solidarity and Development Party

Introduction

The upcoming general elections in the Republic of the Union of Myanmar, scheduled for 8 November 2020, are the third since the end of military rule. The elections of November 2010 served as a tool for military leaders to steer the country towards a more democratic form of state. The elections of November 2015 were essentially a referendum against military rule, leading to a government of the National League for Democracy (NLD) under State Counsellor Daw Aung San Suu Kyi. The next elections are expected to be more competitive than in the past. In addition to the general elections, the Union Election Commission (UEC) also organized by-elections in 2012, 2017, and 2018, the last round of which has indicated that support for the NLD might be waning in some areas. The UEC has introduced a number of procedural changes over the years, but with few exceptions the legal framework for holding elections remains essentially unchanged. Authorities have yet implemented few recommendations provided by international election observers to improve the electoral process.¹

Expectations for change were very high when the NLD took office in 2016 following a landslide victory. Within the first year of the new government, many people across the country started to feel disappointed by the lack of democratic reforms. Former supporters in civil society felt ignored as civic space, notably the freedom of expression, became more curtailed than before. During the following years, economic reforms and international investments were not achieved as anticipated, and constitutional reforms have not been accomplished. Although the Panglong peace process to end the world's longest-standing civil war was a priority in the beginning of the term, the new administration has shown neither the determination nor the capacity to take it forward.² Fighting continued and intensified in northern Shan and Kachin States in particular, however, the fiercest atrocities occurred in Rakhine State, with ongoing attacks against civilians. Myanmar was brought before the International Court of Justice for alleged crimes against humanity and genocide.

In addition to all these challenges, the country is among the first in Southeast Asia to organize elections under the conditions of the Covid-19 pandemic. Myanmar was slow to react to the outbreak. While other countries in the region had already shut down and closed their borders, the first coronavirus case in Yangon was only announced on 23 March. President Win Myint declared precautionary measures and formed a Covid-19 Control and Emergency Response Committee by the end of the month. The Ministry of Health and Sports (MoHS) became the line ministry for governmental responses. Testing

1 Myanmar has still not acceded to the International Covenant for Civil and Political Rights (ICCPR), the most important international treaty providing prerequisites for the conduct of democratic elections.

2 ICG 2020a

for the virus increased since then, but overall capacities remained low.³ On 9 May, the Myanmar military declared a unilateral ceasefire to allow anti-Covid-19 measures in conflict-torn areas with the exception of Rakhine State, and many ethnic armed organisations also declared a unilateral ceasefire on their behalf. The health departments of ethnic armed organisations – many of them located along international borders where the returning migrant workers also brought the risk of infections to Myanmar – became important actors in crisis response in ceasefire areas.⁴

So far, the spread of the virus remained reportedly limited and did not cause as many casualties as elsewhere. This resembles the situation in other countries in mainland Southeast Asia and in Yunnan. However, the disease could be far more prevalent than is publicly acknowledged. On 18 April, the MoHS released a stay-at-home order for seven townships of Yangon Region. The government imposed in-country movement restrictions and forbade assemblies of more than five people. Governmental agencies could travel freely, but civil society could not, reminding in particular the older generation of conditions under the military regime. However, all in all the measures appeared reasonable, were widely accepted and began to be lifted during the month of June. There was never a panic that the pandemic would overtake the country in uncontrollable ways, and uncertainties regarding the holding of elections remained limited to electoral stakeholders.

The Covid-19 pandemic exposes electoral processes worldwide to new risks and challenges. By June 2020, over 100 electoral events had been postponed globally while some countries decided to go ahead with elections despite the pandemic. In Asia, South Korea is a prominent example where parliamentary elections on 15 April were successfully held, and turnout even increased despite limited out-of-country voting. However, the case has to be understood in all specifics and cannot be simply applied to other countries in the region.⁵ Technical assistance providers who are also supporting the Union Elections Commission (UEC) and other electoral stakeholders in Myanmar have already started to assemble lessons learned and good practices to support elections under the conditions of Covid-19.⁶ On 4 June, the UEC announced that the next general elections will be held in November 2020, thus following the timelines of 2010 and 2015, and to carry out election preparations as planned.

Covid-19 can effect elections in a number of ways: The restriction of civic liberties for health imperatives, in particular the freedoms of movement and assembly, can have an

3 Hein Thar 2020

4 ICG 2020c

5 Spinelli 2020

6 See the websites of [IFES](#) and [International IDEA](#) for international comparison. Many international assistance providers left Myanmar before international travel restrictions took effect, but some stayed and worked with the UEC throughout.

impact on election preparations, but in particular on the campaign; processes that cannot be transferred to taking place online can be postponed, such as public voter list displays; civic and voter education activities, critical in particular in remote areas without internet access and other sources of information, can get suspended; and election day procedures and other human interactions will have to be adjusted with precautionary hygiene and safety measures. In Myanmar, the outbreak of Covid-19 compounds already existing weaknesses and risks in the electoral process, but does not make the holding of elections impossible or even unlikely. However, four months before the presumed election period of November 2020, the further spread of the virus globally and in country has to be factored in as a potential risk which could affect the process in unpredictable ways.

1. Legal Framework in Brief

In the general elections, voters in Myanmar elect 330 seats in the Pyithu Hluttaw (Lower House) and 168 seats in the Amyotha Hluttaw (Upper House), which together form the Pyidaungsu Hluttaw (the bi-cameral legislature at Union level) for a five-year term. Concurrently, representatives for 14 State and Region Hluttaws are elected. Following the formation of the Pyidaungsu Hluttaw, the President who spearheads the government and appoints a number of executive functions, is elected by way of an electoral college. The general elections use a majoritarian first-past-the post electoral system with single-member constituencies based on townships. As a consequence of the electoral system, and taking the presidential powers of appointment into account, the entire governance structure of the country is at stake in a single electoral event.⁷

The office of State Counsellor is not an elected office and is not foreseen in the Constitution. Based on the 2008 Constitution, which was promulgated by the military regime, all legislatures are composed of elected representatives together with a quarter of all representatives appointed by the Commander-in-Chief. The Myanmar military, the Tatmadaw, also continues to play an important role in the executive government of the country.

On the basis of the 2008 Constitution, together with the Union Election Commission Law and the Political Party Registration Law, the election laws extend to the Amyotha Hluttaw, Pyithu Hluttaw, and State and Region Hluttaw laws. All these laws are in force since 2010, and some have been amended since. In addition, the conduct of elections is regulated by a number of UEC rules, regulations and directives. Since the last general elections in 2015, the regulatory framework remained essentially unchanged – until recently. Amendments introduced with the passing of by-laws by the end of May 2020 result in two changes in the electoral process, among others: Military voters and their families no longer vote inside barracks, but in regular polling stations; and the required timeframe to transfer the right to vote from the permanent to a temporary residence was reduced from 180 days to 90 days.

These changes are not received without critique. First, voting outside military installations is seen by some stakeholders as potentially exposing the voters concerned to avoidable security risks. The voting of military personnel and their families without any civilian oversight inside the barracks was strongly criticized in the past. Military advance voting was considered in particular opaque and as a tool to manipulate results. Myanmar's military has an estimated number of 500.000; together with family members, this group amounts to over one million voters. Second, reducing the timeframe to temporarily transfer voters' residence to vote in a constituency other than their home constituency is met with scepticism by some ethnic political actors who think it could be to their electoral disadvantage in case Burmese migrant workers temporarily register in their constituencies.

⁷ Compare Lidauer and Saphy 2014

2. Election Administration

2.1. Institutional Organisation and Composition

The administration of elections in Myanmar lies in the hands of the Union Election Commission (UEC). The 2008 Constitution vests the UEC with the responsibility to organise the general elections and the registration and supervision of political parties. The election commission enjoys broad and largely unchecked powers in the implementation of both these competencies. For the conduct of the elections, the UEC *inter alia* adopts rules and regulations, appoints election sub-commissions at state/region, district and township levels, designs electoral constituencies, prepares voter lists, certifies results, and decides on election-related complaints and appeals. It can also postpone or cancel elections in areas affected by natural disaster or threats to security (see below).⁸

Like many other executive functions, the Union Election Commission is appointed by the President. Based on constitutional provisions, the UEC consists of a minimum of five members. Five members of the commission, including Chairman U Hla Thein, assumed office in March 2016, replacing the previous UEC who oversaw the 2015 general elections. Since new appointments in March 2019, the commission consists again of 15 members including the Chairman, as it did in 2015. Most members have a legal background and a background as civil servants, but are also seen as close to the NLD. The composition of the UEC does not reflect the ethnic diversity of the country, does not include young people, and there is no woman among its members. Against this background, political parties have at times expressed their lack of confidence in the impartiality of the UEC. Under attack from the political opposition, the UEC will have to be proactive in demonstrating its impartiality and independence.

Only one current UEC member was part of the commission overseeing the previous general elections. The Director General (DG) – a role seen as crucial both for the inner organization of the commission but also for effectively spearheading the administration of elections – was replaced mid-term. However, many Directors within the UEC Secretariat have experience from previous elections. Also, most election officials who are in charge to lead election preparations in the states and regions have not changed since 2015. At sub-national level, election commissions are essentially composed of civil servants belonging to the General Administration Department (GAD), the Ministry of Immigration and Population (MoIP), and the Advocate General Office. Consequently, the election administration is, to a large extent, functionally dependent on the executive branch across the country for running the elections.

8 Lidauer and Saphy 2014

As set forth in the Constitution and regulated in the electoral laws and by-laws, many crucial aspects of the electoral process are left for the UEC to decide with an unusual margin of discretion. These include the timeframe for candidate registration and for voter registration, access for observers, ballot printing and the transparency of results consolidation, among others. These matters are not mere technical points, but can adversely affect the integrity of the process as well as the rights of voters and candidates. The systems usually in place for dealing with election challenges (campaign regulation, possibility for recounts, and election dispute resolution mechanisms) appear relatively weak in Myanmar, and have not been tested in more competitive elections. Importantly, the UEC establishes tribunals for election-related complaints and appeals and is its own judge in electoral matters; there is no possibility to appeal a UEC decision.⁹

Many electoral stakeholders expect the UEC to publish an electoral calendar to provide details and deadlines for key administrative steps between the announcement of election day and election day. Such a calendar was provided for the 2017 by-elections, which was much appreciated by all stakeholders, but was missing for the 2018 by-elections. Informants from within the UEC have indicated that the commission might be reluctant to publicise an electoral calendar for the 2020 general elections, although it foresees the various steps in its internal workflow, in order to maintain the flexibility to adjust processes and deadlines as needed. However, not having such a calendar will impede election preparations by political parties, election observers and other stakeholders, and might cause avoidable perceptions of arbitrary and potentially partisan UEC decisions.

Recommendation

*The UEC is recommended to issue an **electoral calendar** as it did for by-elections in 2017.*

Stakeholder meetings between the UEC and these groups were an important part of the electoral process in 2015. At the time of the EU Election Follow-up Mission in the first half of 2019, the perceived lack of transparency in the work of the UEC and a lack of regular communication with stakeholders was viewed as a critical shortcoming in its performance. Compounded by restrictions to curb the spread of Covid-19, various interview partners for this assessment have lamented the lack of exchange between the UEC and political parties as well as civil society.

Recommendation

*The UEC could consider holding regular **stakeholder meetings** with political parties and civil society to enhance communication and information flows on electoral matters and instil trust in the electoral process.*

⁹ Ibid.

2.2. Voter Registration

Myanmar uses a passive voter registration system based on existing population data. For the previous general elections, from December 2014 to the end of July 2015, UEC township sub-commissions entered eligible voter data from the GAD and MoIP household lists and logbooks into an electronic database. This was the first time the voter list had been computerized in Myanmar. It was widely acknowledged that these initial lists were not entirely accurate, which created challenges for the registration process. Inaccuracies in voter lists may lead to voters being disenfranchised, political controversies, accusations of manipulation, or attempts to discredit the electoral process.

The UEC established mechanisms to allow for inclusions, corrections, and deletions in the voter lists, and provisions were made to facilitate voter transfers between constituencies. Ahead of the 2015 elections, several rounds of public verification exercises were conducted between March and October 2015, in order to update and correct the list, without this being required by the law. Lists were displayed for voters to check their names and request corrections or additions. During the display periods, the UEC organised a nationwide voter education campaign with the distribution of pamphlets and posters throughout Myanmar in some 16 different ethnic languages. Despite remaining uncertainties concerning the quality of the voter register, the final voter lists were more accurate than expected, resulting in a relatively small number of voters turned away on election day and marking a notable improvement over the lists used in past elections.¹⁰

According to the UEC, over thirty-seven million voters will be eligible to vote in the 2020 general elections, including around five million first-time voters. To prepare the voter register for the 2020 elections, the UEC ordered voter list updates to be conducted already in the second half of 2019. However, unlike in 2015, it appears that it has not yet been working towards a central, computerized register; the preliminary lists rather exist as digital spreadsheets of different quality in states and regions or townships only. At the time of this assessment, the UEC was looking to identify technical partners and options to centralise the list. The UEC collaborates with several international support organisations who have planned inter alia to provide options to make the voter list searchable online. However, a central and computerised database would be a requirement for this. Reportedly over 100.000 migrant workers returned from Thailand and Malaysia in the course of the Covid-19 crisis and should be added to the list. Although recent returnees were reportedly added, compounded by Covid-19, public display periods have not yet taken place. The UEC should make up leeway and organise voter list updates on township level as soon as conditions allow.¹¹

10 EU EOM 2015

11 At the time of writing, the UEC announced voter list displays to start from 25 July.

Recommendation:

The UEC could establish a centralised voter list and facilitate voter list display periods as soon as the conditions around Covid-19 allow. In the absence of public displays, efforts to make the voter list searchable online could be enhanced and this option promoted in order to maximise the number of voters who verify their names on the list and request changes where necessary.

3. Political Parties and Electoral Campaign

3.1. Political Party Landscape

The 2008 Constitution provides, in Article 354, that every citizen may exercise the right to form associations and organisations. Chapter X provides for the existence of political parties. It is further stated, in Article 406, that a political party shall have the right to organise freely, and to participate and compete in elections. Article 407 stipulates that parties will lose their rights to be registered if they receive support from a foreign government or religious association, or if they abuse religion for political purposes. Article 408 requires that, if a political party transgresses the listed prohibitions, their registration “shall be revoked”. Parties will also lose their registration should their members include persons who, for example, contact members of unlawful associations, or who are involved with narcotic drugs. The Political Parties Registration Act 2010 further elaborates upon the constitutional provisions.¹²

97 political parties are registered with the UEC and are expected to contest the elections, fielding thousands of candidates. The National League for Democracy (NLD) is the most prominent group, followed by the former military-proxy Union Solidarity and Development Party (USDP) as well as a number of so-called ethnic political parties and new so-called Burmese political parties.

Since the last general elections in 2015, the political party landscape has changed to some degree. Among political parties which are expected to contest the elections predominantly in Burmese Regions, there are splinter groups of NLD and USDP as well as other new groups, including the People’s Party (PP), the People’s Pioneer Party (PPP), the Democratic Party of National Politics (DNP), and the Union Betterment Party (UBP). In ethnic states, the NLD will be challenged by a number of new ethnic parties which have since consolidated to potentially become state-based single-party options for specific ethnic groups. In 2015, ethnic votes were split between multiple parties in all ethnic states, with the exception of Rakhine which saw the only (temporary) unified ethnic party at that time, the Arakan National Party (ANP). In 2020, the situation has reversed; while the ANP has since split, ethnic parties have merged in Chin, Kachin, Kayah, Kayin and Mon States.¹³ Reportedly, these new parties are also linked through similar approaches to federalism.¹⁴ The two

12 Ibid.

13 New ethnic political parties are the Chin National League for Democracy (CNLD), the Kachin State People’s Party (KSPP), the Karen National Development Party (KNDP), the Kayah State Democracy Party (KySDP), the Mon Union Party (MUP) and also include the Wa National Party (WNP).

14 Su Mon Thant 2020

political parties affiliated with Shan ethnicity, the Shan National League for Democracy (SNLD) and the Shan Nationalities Development Party (SNDP), have not merged.

3.2. Political Party and Candidate Registration

The UEC is vested with full power to register, suspend, or deregister political parties. The decision of the UEC is final and conclusive, and the UEC has the sole and exclusive power to review its own actions. For comparison, in 2015 the UEC certified a total of 6,074 candidates, comprising representatives of 91 political parties and 309 independent candidates. Of these, 1,745 were running for a seat in the Pyithu Hluttaw, 886 for the Amyotha Hluttaw, 3,282 for the Region/State Assemblies, and 161 for the election of 29 ethnic affairs ministers.¹⁵

There are concerns regarding the framework for the registration of political parties and the process for the management of candidate nomination. Of the over 6,100 candidates submitted nominations for the elections of 2015, 75 were rejected. The rejections resulted in large measure from a stricter interpretation of the citizenship criteria than had been applied in previous elections. The rejection of candidates had a particularly high impact on Muslim candidates, including Rohingya candidates from Rakhine State. Preceded by growing anti-Muslim sentiments ahead of the polls and the disenfranchisement of predominantly Rohingya voters, the national parliament subsequently did not include a single representative of Muslim faith for the first time since independence.¹⁶

Candidate registration with the UEC for the 2020 elections is expected for end of July/early August, however, political parties have already started to select candidates internally. Reportedly 79 parties plan to contest the elections nationwide, but standing as a candidate for the NLD is widely considered as a likely route to joining parliament. In 2015, the NLD's pre-election campaign was overshadowed by central executive committee decisions to select future MPs who did not always take local preferences into account, and left out some prominent figures. In June 2020, the NLD reportedly involved local elders in the decision-making process for candidate selection. Many people associate local elders with respected residents of a township who, since the era of military rule, act as witnesses for official functions and also play a role in local elections. Opposition candidates have criticised their involvement in the candidate selection process of the NLD as distorting the level playing field for other political actors.¹⁷ Daw Aung San Suu Kyi used to be a prominent candidate in Kawhmu township in Yangon Region

15 EU EOM 2015

16 Ibid.

17 Ye Mon 2020

herself, but may not run for parliament again according to some media reports.¹⁸ Taking an executive function in the next government does not require her to win a seat in the Pyidaungsu Hluttaw beforehand.

3.3. Campaign Regulation

The 2008 Constitution contains restrictive provisions which undermine the freedoms of association, assembly and expression – rights which are of particular importance in the context of the elections. Restrictive laws include the Right to Peaceful Assembly and Peaceful Procession Act, the Official Secrets Act, the Unlawful Associations Act, and the Electronic Transactions Act.

In 2015, there was a widespread consensus among civil society that the suppression of human rights had a chilling effect on the election campaign. The UEC issued Directive No. 1 of 2014, which regulated the campaign. Four forms of campaign activity are provided for, namely campaign events in a fixed place, mobile rallies, use of broadcast media, and the publication of written materials. Within 15 days of the approval of candidature, the candidate must apply to the respective sub-commission for permission to conduct campaign activities. Detailed plans of venues for rallies and itineraries for mobile campaigning must be submitted, and prior approval of all activities must be secured. Electoral authorities, however, adopted a generally relaxed approach to the notice requirements in 2015. Overall, the absence of monitoring and enforcement powers during the campaign period was a deficiency in the legal framework.¹⁹ It is yet to be observed how this will be dealt with in 2020.

At the time of this assessment, Myanmar has a number of temporary restrictions in place to prevent the spread of Covid-19. These include a restriction for more than five people to meet in public as well as in-country travel restrictions and quarantine regulations that may differ from one administrative unit to another. Whether a genuine campaign can be conducted ahead of the 2020 elections will ultimately depend on whether these restrictions will remain in place, and whether the upholding of any such restrictions will be considered legitimate under epidemiological criteria.

Some interview partners for this assessment have argued that, the longer the freedoms of movement and assembly are restricted, the more beneficial the situation could be for the NLD. As incumbent, the NLD enjoyed nearly exclusive visibility as respondent to the health crisis. “Mother Suu” became the face of this response, including increasingly through her Facebook page, but other politicians were also visible in anti-pandemic

18 Ibid.

19 EU EOM 2015

measures, including through donations. While the formal campaign period extends to two months prior to election day, interlocutors opined that some political parties have already started to campaign, notably the NLD, the USDP, and the UBP, in particular online and through increased visibility on Facebook. There is some confusion whether constitutional provisions allow the governmental party to campaign earlier than others.²⁰ Ethnic parties were yet seen in campaign mode to a lesser degree, which could be related to different availability of financial means.

Similar to 2015, the political parties have agreed to sign a Code of Conduct (CoC) for Political Parties ahead of the forthcoming elections. Negotiations to agree on a new CoC started in 2019. The 2015 version of the code has been updated in some areas, for example by vesting more importance in the role of the UEC's mediation committees in resolving pre-electoral disputes at sub-national level, and with regards to online campaigning. It was envisaged to conclude discussions before Thingyan, however, this process became delayed due to Covid-19. The new Code of Conduct was signed on 26 June in a ceremony chaired by the UEC. However, some 30 parties did not partake in signing the code, revealing dissonances between the parties regarding some its provisions, but also indicating that parties do not accept the NLD's hegemony and seek opportunities to criticize it as well as the UEC. The CoC does not have a strong sanctioning mechanism nor outreach instruments attached to promote it also at sub-national level. It can only be effective and have an impact on the fairness of the campaign if it will be promoted, actively used, and is also known to the media. This could be further supported by international actors and endorsed by national stakeholders.

3.4. Campaign Finance

Myanmar's electoral framework includes a rudimentary system for campaign finance. Candidates' campaign expenditures are limited to ten million Kyats (circa. 7,600 Euro). This sum is considered to be more than enough, and impossible to reach in some cases, by most parties and candidates, but not by the NLD, USDP, and few other parties who have wealthy donors.

Candidates should submit detailed records of campaign expenditure within 30 days of the date on which the candidate is declared elected. In-kind-donations are part of the expenses reports of individual candidates. Candidates should declare expenditure by a party on their behalf, but there is no requirement for parties to declare their own campaign expenditure; their legal obligation is to submit annual accounts. Candidates may be disqualified for failure to submit accounts of election expenses, while spending in excess of the limits can also be the basis for an election petition challenging results. In 2015, while 175 candidates

20 Ei Ei Toe Lwin 2020

were recommended for disqualification due to campaign finance issues, none of them had been elected, so no seats were in jeopardy.²¹

Campaign finance rules are generally weak, and without an adequate mechanism to monitor campaign income or expenditure lack real transparency and accountability. Although the UEC Strategic Plan 2019-2022 envisages a stricter monitoring of political party and campaign financing, none of the recommendations of international election observers suggested for campaign finance have been implemented.²²

21 EU EOM 2015, TCC EOM 2016

22 EU EFM Report 2019

4. Elections and Conflict

Electoral and conflict dynamics can collide in various ways, exacerbating already existing risks. Elections per se constitute phases of competition rather than negotiation and compromise.²³ In addition, the 2020 elections will likely be more competitive than previous polls, including in ethnic states. Myanmar has relatively little history of electoral violence, however, the political grievances which lie at the heart of Myanmar's formal peace process are far from resolved. Indeed, the Panglong peace process – despite being a priority for the State Counsellor in the beginning of her government – has long stalled, and new conflicts have escalated during the ongoing term. The NLD administration and the parties to the 2015 Nationwide Ceasefire Agreement (NCA) have agreed to convene another conference in August 2020 before the peace process is expected to hibernate until a new government is in place next year.

Historically, the government has kept peace negotiations and the electoral process institutionally apart. One area where the UEC might advance from past practices in the nexus of elections and conflict is the enfranchisement of internally displaced voters (IDPs). IDP voters have previously been regarded as “floating population”, to which the rules for the transfer of voting rights from one constituency to another could apply. With a relative peace in areas where IDP camps are located in Kachin State, Shan State, and other territories, and with a changed timeframe for the registration of such voters, the UEC could be encouraged to facilitate the vote for this specific population affected by conflict.

Recommendation

*The UEC could consider **facilitating elections for internally displaced persons (IDPs)**, taking their choice of voting for their home constituency or the constituency of temporary residence into account.*

4.1. The Potential Cancellation of Elections

The cancellation or postponement of elections in areas affected by conflict is little understood by voters, election administrators, and outside observers alike. The authority to cancel or postpone elections lies with the UEC, based on UEC law section 10f and sections 50 and 51 of the electoral laws. The legal framework provides for cancellation or postponement for security reasons or if natural disasters do not allow the holding of elections. As with other elements of the law, the language of the relevant sections is ambiguous, in particular with regard to the partial cancellation of voting in a given electoral constituency. The law does also not provide a timeframe for when prior to the

23 Compare Callahan and Myo Zaw Oo 2019

elections the declaration of cancellations or postponements should occur. In 2015, it was estimated that all in all 500.000 voters were disenfranchised by these cancellations.²⁴

The cancellation or postponement of elections can have different consequences, depending on the size of the administrative units concerned. Vacant seats in the legislature occur only where elections are cancelled for entire constituencies, as in Shan State in 2015. Conversely, the partial cancellation of elections in a number of wards or village tracts smaller than a constituency does not translate into vacant seats, but leads to the disenfranchisement of the voters residing in the cancelled areas, as the election goes ahead regardless of their participation. Election cancellations or postponement at times appeared ambiguous in the past, or occurred in areas such as the Wa Self-administered Zone where the state administration required to organize elections was absent from the outset. In 2020, however, the security environment in significant parts of Rakhine State does most probably not allow voter list updates, public campaigns, or other election preparations. Instances of (partial) election cancellation or postponement can therefore be expected for the upcoming elections.

Recommendation

*The UEC, in collaboration with the security apparatus, should exercise transparency in the case of necessary full or partial **election cancellations**, and should communicate such decisions timely and clearly.*

4.2. Conflict in Rakhine State

While conflict-prone areas in northern and south-eastern parts of Myanmar have recently seen a relative cessation of hostilities, Rakhine State experiences some of the most sustained and intense fighting the country has seen in years.²⁵ During the transitional period of the last decade, anti-Muslim sentiments started erupting in 2012 and rising Buddhist nationalism led to Rohingya disenfranchisement in the 2015 elections. The mass exodus of over 700.000 Rohingya to Bangladesh in 2017 following military measures which reportedly involved crimes against humanity brought Myanmar before the International Court of Justice. However, also the Rakhine population became increasingly alienated from the central government. A new frontline emerged between the Tatmadaw and the Arakan Army (AA), a Rakhine ethnic armed organisation, since early 2019, spreading violently across Rakhine State and neighbouring Paletwa township in Chin State.

The ongoing armed struggle also follows election-related disappointments of the Rakhine population in the past. Despite winning a majority of seats in an electoral battle against

24 The exact figure is difficult to ascertain as the 2014 population census was also not carried out in full in many of the areas concerned. Compare Lidauer 2016.

25 ICG 2020b

NLD and USDP in 2015, their win at the ballot was ignored by the NLD leadership, most prominently by not leading to the appointment of a state Chief Minister from the successful Arakan National Party, but from the NLD. This has further alienated the ethnic Rakhine from the central government, creating the impression that there is not much to gain from the ballot. There are risks of aggravated political grievance in the upcoming polls, as the UEC will likely need to cancel a number of elections locally for security reasons. Given the current extension of the armed conflict – every township of Rakhine State had at least one incident – it is possible that more than half of the state’s townships will see elections cancelled. This will either result in a number of vacant seats in the Rakhine State Hluttaw and the Pyidaungsu Hluttaw, or in elected seats which do not reflect the will of ethnic Rakhine voters. Both scenarios are likely to lead to further alienation of the Rakhine people from Nay Pyi Taw. Additionally, a re-enfranchisement of the remaining Rohingya population who have lost the right to vote during the period leading to the 2015 elections appears out of question.²⁶

According to the International Crisis Group, government leaders appear to be paying little attention to the ongoing conflict. The Tatmadaw’s ceasefire, announced on 9 May to encourage pandemic preparedness and response in other states, does not include the Arakan Army. The AA, in alliance with two other groups, stated a unilateral ceasefire on their side, but did not follow it through.²⁷ Being labelled as a terrorist organisation since March 2020 – a status which criminalises any interaction with the group – they might not have any interest in elections taking place in areas under their influence or in safeguarding the polls. In a worst-case scenario, the AA might consider harming the process through further extending attacks to the state’s NLD-dominated south or elsewhere. All these factors combined render the situation in Rakhine a great risk factor for the upcoming elections. What is more, the convergence of elections and conflict in Rakhine State might complicate the situation even further.

Recommendation

The government should pay urgent attention to Rakhine State. The Tatmadaw should extend its temporary truce with ethnic armed organisations to the Arakan Army to avoid further escalation.

26 ICG 2020b

27 Interview with an expert on Rakhine State politics on 7 July 2020.

5. Social Media and Elections

Myanmar, a country of 53 million people, went from having an internet penetration of 0.23% in 2011 to 39%, with the number of active SIM cards surpassing the number of people by 2017. During this surge, Facebook became nearly synonymous with “the Internet” for many users in the country. Myanmar users did not grow accustomed to technology as it developed. In an information environment which came from day-to-day censorship to next to none quality control, disinformation, fake news and hate speech were also strategically misused. Such phenomena were already documented around the 2015 elections, with the mobilization of anti-Muslim sentiments as a core motivation of Buddhist-nationalist groups. Reportedly, also the Tatmadaw has specialized social media units.²⁸ On the other extreme, 21 June marked the one-year anniversary of the longest Internet shutdown in the world, which reportedly concerns 1.4 million people and is part of warfare in Rakhine.

Methodologies for monitoring social media during elections are still experimental. Several groups are engaged in developing online monitoring tools to contribute to early warning and to taking inflammatory content down. However, overly regulation of online content might curtail the freedom of speech – a delicate balance to achieve. Online campaign spending is yet monitored to a lesser degree; to take a step towards enhanced transparency, Facebook plans to implement its Ad Library for voluntary reporting as of August. The legal framework pertaining to social media is still rudimentary and needs an overhaul, and any election observation in this field should not only analyse online speech and practices, but also look at this from a regulatory perspective.

A number of initiatives have emerged in Myanmar which is now on the forefront of developments to craft new tools to monitor and shape a responsible and responsive digital sphere, including with a focus on elections. Civic-tech innovators aim to provide apps and progressive web applications with regards to electoral data and civic and voter education. Social media monitors who have already been focusing on online hate speech and know the digital landscape of Myanmar well seek to cover also electoral dynamics. At the same time, election observers with years of experience in this field extend their monitoring efforts to social media, as also the electoral campaign is partly taking place online. Many ideas are still under development. The various approaches are not always synchronised, and some have reported a certain saturation of activism in this area. Coordination and knowledge-sharing is certainly important if citizen or international watchdogs and entrepreneurs want to make a positive difference around the next elections. However, the civic tech community in Yangon is small and those active in this field usually know of each other’s activities. There might still be a gap with civic and voter education at large, as digital literacy is still low and should be supported.

Recommendation

Civic tech providers, citizen election observers and donors should collaborate and take professional expertise pertaining to elections into account. Civic and voter education should be prioritised during the remaining months before the elections.

6. Election Observation

The growing integrity of elections in Myanmar over the last decade has profited from external scrutiny and engagement. In 2010, international observers were not invited and election observation at the local level was considered an illicit activity. Nevertheless, citizens provided invaluable reports to inform the international community about the polls. The 2012 by-elections, which led to Daw Aung San Suu Kyi joining parliament for the first time, saw limited diplomatic observation and provided a testing ground for civic space for emerging citizen election observers. However, it was not before 2015 that elections in Myanmar were observed on a broader scale, contributing to the transparency of the process and providing invaluable testimony, reports, and recommendations. Also, the by-elections of 2017 and 2018 were observed by national and international election observers.

Election observation is not foreseen in the law, but the UEC established accreditation mechanisms for observers in the past and has declared 7 July to 15 October 2020 as new application period. In 2015, the UEC accredited 11,445 citizen election observers from 52 organisations, some of them coming from very small grassroots organisations, as well as 468 international observers from six organisations. Most visible were the missions of the European Union as well as The Carter Center, a US-based international non-governmental organization, and the Asian Network for Free Elections (ANFREL), a regional network of civil society organisations. In addition, a total of 526 observers from 36 diplomatic missions as well as 183 persons from election assistance providers were accredited.²⁹ However, the government of Myanmar and the UEC lack behind in addressing observer recommendations, as not many have yet been translated into legal or regulatory changes in the electoral process.³⁰

Recommendation

Myanmar law makers and the UEC should timely address election observer recommendations.

International and national election observers employ similar methodologies and play complementary roles. While the professional assessments of international observers are more likely to find resonance among the diplomatic community and with international media, national election observers usually deploy in much larger numbers and provide independent scrutiny in places that cannot be reached by their international counterparts. Although in particular citizen election observers often have a strong focus on election day, they have also developed specialisations in sector-specific observations such as of the media, of women or youth participation, or in monitoring electoral violence. Citizen and

29 EU EOM 2015

30 EU EFM 2019

international election observers are also preparing to observe the 2020 general elections, but face a variety of challenges which make their deployment yet uncertain.

At the time of this assessment, the People's Alliance for Credible Elections (PACE) appeared to be the only civil society organization preparing for a large-scale, country-wide election observation exercise, covering the campaign period, election day, and the consolidation of results. PACE plan to field several long-term observers and around 2000 observers on election day. The Election Education and Observation Partners (EEOP) network, and some of its member organisations, are also undertaking efforts to observe elections in at least parts of the country. Their engagement will inter alia depend on accreditation by the UEC. Some interlocutors have expressed concerns that the UEC might this time not provide accreditation for citizen observer organisations who are not registered under the Association Registration Law. However, to apply for registration with the Union Registration Board, applicant civil society organisations are required to bring recommendation letters by the President's Office and their respective line ministries, which in the case of citizen election observers is the UEC. The UEC, however, has reportedly expressed reservations to provide such letters. Furthermore, some civil society groups have also reported problems with bank transfers put in place by the Central Bank of Myanmar in conjunction with reinforced anti-money laundering provisions, indicating further complications in the preparation of citizen election observation exercises. This situation should be timely overcome to avoid a closing of civic space in the field of citizens' electoral engagement.

The presence of international election observers in 2020, an invitation by the government of Myanmar and accreditation by the UEC permitting, will ultimately depend on the possibility to travel internationally as well as locally in Myanmar, taking the further course of Covid-19 into account. In a scenario where international election observation is not possible, citizen election observers will be all-the-more important to provide a non-partisan assessment of the elections – if they are free to travel within the country themselves.

Recommendation

*The UEC should continue good practices of exchange with civil society and **avoid unnecessary obstacles** for the accreditation of citizen election observers.*

7. Towards Election Day

Some election preparations were interrupted and slowed down by responses against Covid-19 during the first half of 2020, e.g. voter list displays did not yet take place, the completion of the Code of Conduct for Political Parties was delayed, and stakeholder meetings between the UEC and political parties and civil society were not held during this time. Against this background and general concerns caused by the outbreak of the pandemic, electoral stakeholders expressed uncertainties regarding the timing of the upcoming elections. The election date is not specified in law, but it is related to the duration of the legislative term and derives from constitutional provisions. The timeframe within which elections shall take place is relatively short and can normally not be extended beyond early 2021.³¹ However, following a short period of speculation, on 1 July the UEC declared that the 2020 general elections will take place on 8 November. The timely declaration of the election date has instilled some trust in the process and addressed speculations about any ad infinitum postponement.

No Covid-19 election can be compared to another. Among Asian countries in particular, the example of the South Korean elections held on 15 April 2020 is an often-cited best practice model of how elections under the conditions of Covid-19 might be organised successfully, even with a record turnout. However, the example cannot be transplanted one-on-one to other countries in the region. South Korea started early to combat Covid-19; the measures introduced by the government (including testing and monitoring, contact tracing, self-isolation, social distancing, and strict quarantines) were accepted by the population; remote voting techniques (advance voting days, postal voting, out-of-country voting) had already been used in the past and were encouraged; a code of conduct for voters and clear instructions for poll workers for hygiene in polling stations were developed; and the National Election Commission provided clear public communications. Stringent health safeguards reassured voters and turnout increased despite Covid-19. Election campaigns had a much lower profile than in previous years, and political parties relied predominantly on campaigning online and by digital technology.

Myanmar's electoral procedures do not foresee early voting days or postal ballots, but advance voting which was seen as controversial in the past and therefore enjoys little trust as an electoral practice.³² Following the declaration of election day, the completion of candidate registration, voter list displays and voter list finalisation, and after the campaign period, the UEC will organize polling in over 41.000 polling stations across the country. This number, however, might have to be increased due to measures to

31 An extension beyond this timeframe could only be argued under a state of emergency and an interim government under the National Security Council, which is very unlikely.

32 The UEC has announced that advanced voting for government officials from schools, hospitals and jails will be organized between 8 and 21 October.

prevent the spread of Covid-19. In mid-June, the UEC organised the test-run of a polling station in collaboration with the MoHS. The mock polling station applied social distancing between polling staff as well as the use of face masks, gloves, and sanitizers. This exercise led to discussions about the required size of polling stations and how many persons may be allowed within its premises. As a result, the numbers of polling stations and personnel to hold elections with precautionary measures against the spread of Covid-19 will have to be re-assessed, and the budget required for the elections will likely increase. The remaining timeframe will require reliable inter-agency coordination between the UEC and other state organisations. Provided these conditions are met, the elections can likely take place as foreseen if the pandemic does not deteriorate severely.

Recommendations

The UEC is recommended to issue an **electoral calendar** as it did for by-elections in 2017.

The UEC could consider holding regular **stakeholder meetings** with political parties and civil society to enhance communication and information flows on electoral matters and instil trust in the electoral process.

The UEC could establish a **centralised voter list** and facilitate **voter list display** periods as soon as the conditions around Covid-19 allow. In the absence of public displays, efforts to make the voter list searchable online could be enhanced and this option promoted in order to maximise the number of voters who verify their names on the list, and request changes where necessary.

The UEC could consider **facilitating elections for internally displaced persons (IDPs)**, taking their choice of voting for their home constituency or the constituency of temporary residence into account.

The UEC, in collaboration with the security apparatus, should exercise transparency in the case of necessary full or partial **election cancellations**, and should communicate such decisions timely and clearly.

The government should **pay urgent attention to Rakhine State**. The Tatmadaw should extend its temporary truce with ethnic armed organisations to the Arakan Army to avoid further escalation.

Civic tech providers, citizen election observers and donors should **collaborate and take professional expertise pertaining to elections** into account. **Civic and voter education** should be prioritised during the remaining months before the elections.

Myanmar law makers and the UEC should timely **address election observer recommendations**.

The UEC should continue good practices of exchange with civil society and **avoid unnecessary obstacles** for the accreditation of citizen election observers.

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Methodology

This remote pre-elections assessment draws on the language and findings of past EU and other election observation missions and assessments as well as on 25 update interviews conducted online with a variety of stakeholders, including representatives of the Union Election Commission, political parties, the media, civil society organisations, technical assistance providers, national and international election observers, and independent experts.

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Published by Heinrich Böll Stiftung Yangon Office.

No. 45 (A) Hlaing Myint Mo Lane (3), Hlaing Township, Yangon, Myanmar 11051.

T (+95) 9 907 078 009, (+95) 9 767 204 842

E info@mm.boell.org

I <http://mm.boell.org>

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